Annex 13

Summaries of Direct Investigations

EDUCATION BUREAU ("EDB") AND HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY ("HKEAA")

Case No. OMB/DI/168

Special Arrangements for Examinations for Students with Specific Learning Difficulties

(Investigation commenced on 19 April 2007 and completed on 11 February 2008)

Background

This study follows up our direct investigation into assessment of children with Specific Learning Difficulties ("SpLD") in April 2007, to examine the support services for these students. As examinations are an integral part of our education system with considerable impact on the future of young people, The Ombudsman considered this a priority.

What is SpLD?

2. Characteristically, despite normal intelligence and education opportunities, children with SpLD have problems with one or more of the basic processes: listening, speaking, reading, writing and mathematical calculations.

Why Are Special Arrangements Necessary?

3. Special arrangements for examinations are intended to "level the playing field" by lessening the adverse impact brought about by SpLD so that the students can demonstrate their ability fully.

4. It is Government policy to provide special arrangements for students with SpLD and other students with special education needs ("SEN"). The Disability Discrimination Ordinance Code of Practice on Education (issued by the Equal Opportunities Commission) states that educational establishments have to provide reasonable accommodation for these students. In the Code, special arrangements are considered reasonable accommodation.

Special Arrangements for Internal Examinations

5. EDB regards special arrangements for internal tests and examinations as "part of the school-based support measures for students with SEN", including SpLD. Precise arrangements are to be made by schools based on the difficulties of their students, with reference to the guidelines of EDB and with advice from specialists such as educational psychologists. Parents can approach EDB for assistance if there is disagreement between them and the school over such arrangements.

6. Special arrangements for internal examinations may include extending examination time and enlarging the space in the answer sheets.

Special Arrangements for Public Examinations

7. Candidates with SpLD may apply to HKEAA for special arrangements in public examinations:

(a) in September/October of the Secondary 4 and 6 academic year ("early application"); or

(b) in September/October of the Secondary 5 and 7 academic year ("second phase application").

8. Each application has to be made by:

(a) completion of an application form;

(b) submission of an assessment report form duly signed by a qualified psychologist and the head of the school. The candidate's needs must be supported by —

(i) records of special arrangements in the candidate's school; and

(ii) an up-to-date psychological assessment report.

9. Applications are normally processed in three stages:

(a) HKEAA Secretariat staff screens each application for completeness of information and supporting documents.

(b) Vetting Team considers whether there is a firm diagnosis of SpLD and whether the special arrangements requested are reasonable.

(c) The Task Group makes a decision to approve or reject the application.

(d) The decision of the Task Group is posted to the candidate's school and copied to the candidate in February in the year following the submission of the application.

10. If dissatisfied with the decision, candidates may request in writing for review by an Appeal Panel within one week from the date of the notification letter, giving reasons and supporting documents.

11. Special arrangements for public examinations may include extra time and allowing writing on only one side of an answer book.

Observations and Opinions

Assessment Tool for Secondary Schools

12. Prior to September 2007, in the absence of an assessment tool for secondary school students, candidates of the Hong Kong Certificate of Education Examination had to be assessed by the assessment tool for much younger children (in one case we studied: assessment tool for children aged 10.5 was used for a 16-year-old). This raised the question whether the findings were accurate and fair. With EDB's introduction of the new assessment tool for junior secondary school students in the 2007/08 school year, we expect this situation to improve significantly.

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Special Arrangements in Internal Examinations

13. While EDB issues guidelines to schools and provides professional advice, actual implementation of special arrangements is left to individual school administration. We are concerned that practices may vary significantly from school to school.

14. Our investigation shows that some schools are meticulous in making special arrangements for SpLD students; some do the minimum; others pay lip service and some simply turn a blind eye. This could be due to lack of knowledge among some teachers or the heavy caseload of educational psychologists.

15. Government had surveyed the views of primary school personnel on special arrangements in 2005. Another review is due and it should cover secondary schools as well.

Special Arrangements for Public Examinations

16. *Increase of SpLD Students.* There has been a dramatic increase of SpLD students since 2003/04:

School Year	Primary	Secondary	Total
2003/04	1,195	165	1,360
2004/05	3,045	640	3,685
2005/06	5,534	1,096	6,630
2006/07 (as at 15.9.07)	6,110	2,760	8,870

Source: EDB statistics

17. There has also been a significant increase in the number of applications for special arrangements in the past five years:

Examination Year	Applications Received	
	HKCEE*	**HKALE#**
2003	1	0
2004	8	0
2005	12	2
2006	28	1
2007	48	4

* HKCEE: Hong Kong Certificate of Education Examination
# HKALE: Hong Kong Advanced Level Examination
Source: HKEAA statistics

18. The increase in the number of applications anticipated will have implications for the workload of HKEAA.

19. *Tardiness in Conveying Task Group's Decisions.* The time lapse for HKEAA Secretariat staff to dispatch to schools the notification of the Task Group's decisions ranged from 28 to 35 days. There is a case for notifying refused applicants as soon as possible, to allow them more time to consider appeal and take further action.

20. In April 2005, HKEAA introduced the "early application" option (para. 7). Regrettably, few students have made use of this option:

Year	SpLD Applications in HKCEE	Early Applications in HKCEE	SpLD Applications in HKALE	Early Applications in HKALE
2006	25	9	1	1
2007	44	2	4	0

Source: HKEAA statistics

21. The "early application" option should give ample time for HKEAA to process the applications; ease the stress on the students in awaiting the outcome to enable them to focus better on their studies; and facilitate schools emulating the approved special arrangements so that the students can familiarise themselves with those arrangements.

22. *Unreasonable Time Allowed for Appeals.* It is a time-consuming process if further psychological assessment is required for appeal. Officially, according to HKEAA guidelines, the deadline for appeal is one week. In the cases we studied, the deadline ranges from five to 12 days. As the notification letter was sent through the post, the duration actually given was even shorter than that stated in the letter.

23. *Lack of Transparency.* Our study shows that HKEAA generally did not give reasons for rejecting an applicant.

24. *Different Opinions in Diagnosis.* The Task Group rejected three applications despite support from educational/clinical psychologists. The Appeal Panel even noted in one case that "there were discrepant opinions on diagnosis and standard assessment tools for SpLD were not available". With the introduction of the new assessment tool (para. 12), we hope such discrepancies will be minimised.

25. *Need for Review of Criteria for Use of Computers.* We consider that, in deciding whether use of computer should be permitted, views of the professionals (i.e. educational psychologists, doctors) consulted by the student concerned should be given weight in case of doubt.

26. *Composition of the Task Group.* Apart from the students themselves, those most concerned are their parents. Parental representation on the Task Group should help.

27. *Record Keeping.* Our examination of HKEAA documents shows that, except for one case, no record is kept of the details of the deliberations or the reasons for decisions of the Task Group or Appeal Panel.

28. *Administration of Examination Arrangements.* In one case we studied, an SpLD candidate was given wrong information about his examination centre. Although possibly an isolated case, it has highlighted the importance of cross-checking arrangements.

Public and Parental Awareness

29. It is important that parents are aware that they can approach EDB for assistance in case of disagreement with the school over special arrangements for their SpLD children.

Related Issues

30. We have identified several issues for our further study:

(a) the notable decrease in number of SpLD students at senior secondary level;

(b) insufficient recognition of SpLD among some of the teachers and staff; and

(c) allegations of schools refusing to submit SpLD children's applications for HKCEE.

Recommendations

31. The Ombudsman made recommendations for EDB and HKEAA, including:

For EDB Action

(a) To remind school administration that special arrangements for students with SpLD for internal examinations are a requirement under the Disability Discrimination Ordinance.

(b) To monitor suitably the implementation of special arrangements for internal examinations.

(c) To survey and assess the requirements for educational psychology service and to plan for such provision.

(d) To survey both primary and secondary schools to review the existing special arrangements for internal examinations.

For HKEAA Action

(e) To set an earlier target time-frame for informing candidates of the Task Group's decision regarding their applications.

(f) To provide a more reasonable time-frame for appeal.

(g) To consider making the "early application" option a normal and common practice.

(h) In case of rejection, to give reasons to enable candidates to consider further action.

(i) To review the existing criteria for use of computer.

(j) To consider parental representation on the Task Group.

(k) To document the deliberations of the Task Group and the Appeal Panel.

(l) To review the procedures for administration of examination arrangements to ensure that the correct special arrangements are put in place.

(m) To review resource requirements in anticipation of increase in workload resulting from significant increase in applications for special arrangements.

For EDB and HKEAA Action

(n) To promote awareness among parents and students of EDB assistance in case of disagreement with the school.

(o) To publicise the availability of special arrangements through easily accessible and comprehensible means, e.g. pamphlets.

(p) To step up liaison with parent-teacher associations and non-Government organisations for assistance in consultation and dissemination of information.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), BUILDINGS DEPARTMENT ("BD"), WATER SUPPLIES DEPARTMENT ("WSD") AND JOINT OFFICE OF BD AND FEHD ("JO")

Case No. OMB/DI/126
Handling of Water Seepage Complaints
(Investigation commenced on 5 July 2007 and completed on 31 March 2008)

Background

Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or wastage of water, Government has a statutory responsibility to intervene. The departments concerned are FEHD, BD, WSD and, since mid-2006, JO[1] comprising BD and FEHD staff. WSD is not a party to JO.

[1] After a pilot JO set up in December 2004 in Shamshuipo, the JO scheme was extended in mid-2006 to the whole territory.

2. Seepage matters have been a perennial source for complaints. These complaints have continued even after establishment of JO intended to be a one-stop service for handling these complaints. Against this background, The Ombudsman initiated a direct investigation to examine the effectiveness of the JO scheme in handling seepage complaints.

Recent Developments

3. The JO scheme, planned to operate for three years, was undergoing an interim review in early 2008. Meanwhile, JO had already introduced measures to improve procedures concerning operational timelines, entry to suspected premises and management of consultants.

Observations and Opinions

4. Despite its relative success over previous arrangements, the service provided by JO is neither adequately coordinated nor efficiently effective. Our study has identified a number of serious deficiencies in Government's arrangements in handling seepage complaints.

Disjointed JO Structure

5. JO lacks a coherent structure and is but a loosely "joined" assortment of BD and FEHD staff in uneasy partnership and without a lead department. Neither BD nor FEHD has proper authority over all JO staff or responsibility for JO performance.

6. Furthermore, given that 12% of seepage cases are related to water supply pipes, not including WSD in JO makes enforcement in these cases incomplete, and even difficult.

Disagreement over Enforcement Responsibilities

7. Failure of FEHD, BD and WSD to agree on their enforcement responsibilities defers and at times, even hinders action. Some cases have dragged on for an inordinately long time (18 months of disagreement in one case), without any consideration for the plight of the affected parties.

Divergent Interpretation of "Nuisance"

8. Departmental disagreement, or uncertainty, over responsibilities is complicated by the diverse interpretation of "nuisance". For example, while FEHD does not see seepage of rainwater or potable water as nuisance, BD and WSD tend to treat seepage cases not enforceable under their purview as nuisances enforceable by FEHD.

Insufficient Timelines and Ineffective Monitoring

9. JO's operational guidelines contain insufficient target timelines or performance pledges for most tasks. There is also no requirement to inform complainants of progress. In one of the worst cases, there was a lapse of 23 months of inaction by JO staff.

Summaries of Direct Investigations

Ineffective Management of Consultants

10. Consultants play an important role in JO investigation. Some consultants have proved to be inefficient and even incompetent, despite monitoring mechanisms including biweekly progress meetings, issue of warning letters, and sanctions such as termination of contract.

11. A cause for the poor performance of some consultants could be the short duration of their contracts (maximum 12 months). This short duration often means that by the time the consultant and his staff gain sufficient knowledge and experience in the work, the contract nears expiry. It is also relatively difficult for the consultant to recruit and retain good staff under such short contracts.

Problems in Resolving Civil Disputes

12. Some property owners do solve seepage problems through their own efforts, often with the cooperation of their neighbours. Where such cooperation is absent, some would resort to legal proceedings. However, the existing channels for resolving such civil disputes have disadvantages:

(a) Generally legal proceedings are expensive both in terms of time and costs.

(b) The Small Claims Tribunal is not expensive but it can only handle cases where damage has actually been sustained and the claim does not exceed $50,000. It is particularly not useful in cases where the party suspected to be the source of seepage does not allow investigation or facilitate repairs.

Recommendations

13. Government initiative is commendable in setting up JO as a one-stop service and in exploring ways for improving its operation. For further improvement, The Ombudsman made 17 recommendations, including the following:

(a) BD, FEHD and WSD to seriously review the organisation and staffing of JO with a view to designating a department to be the acknowledged head of JO with formal authority and clear lines of command over staff and office management.

(b) As part of this review, to consider including WSD as part of JO operation.

(c) BD, FEHD and WSD to work out some mechanism to resolve disagreement over enforcement responsibilities expeditiously.

(d) FEHD to develop a clear, precise and publicly defensible definition of “nuisance” and to establish practical guidelines for staff on the issue of nuisance notices.

(e) JO to establish more comprehensive internal milestones and public performance pledges for monitoring progress.

(f) JO to be more vigilant and more outcome-oriented in its operational monitoring of seepage consultants.

(g) In cases of significant under-performance or serious delay by consultants, JO to intervene to redress the situation.

(h) JO to consider granting consultant contracts of longer duration.

(i) BD to discuss with Development Bureau on according priority to establishing a Building Affairs Tribunal, a proposal mooted by Government since 2005.

14. The departments accepted all our recommendations.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB/DI/156
Mechanism for Handling Conflict of Interests in Organisations Subvented by LCSD
(Investigation commenced on 5 February 2007 and completed on 12 November 2007)

Background

In March 2006, the media reported that the Hong Kong Amateur Athletic Association ("HKAAA") had awarded a service contract to a company owned by its Chairman. As HKAAA receives subvention from LCSD, The Ombudsman was concerned whether LCSD had appropriate mechanism to monitor its subvented organisations for conflict of interests.

Subvention and Financial Support

2. LCSD grants can be broadly divided into two categories: annual subvention and project-based financial support. From 2004/05 to 2006/07, LCSD granted a total of $1,085 million.

Annual Subvention

3. Organisations receiving annual subventions include:

(a) national sports associations;

(b) non-governmental organisation holiday camps and sea activities centres; and

(c) performing arts groups (the Home Affairs Bureau had taken over funding responsibility for these groups since 1 April 2007).

Project-based Financial Support

4. Project-based financial support is provided for a number of organisations to present cultural programmes and to undertake "greening Hong Kong" and "greening school" activities.

Monitoring Mechanism

Annual Agreement

5. Under an annual Agreement with Government, national sports associations and performing arts groups undertake, among other things, to observe fair and transparent procedures for procurement and tendering and to avoid conflict of interests in their operational practices and decision-making processes.

Code of Conduct

6. LCSD issues a sample Code of Conduct ("the Code") for subvented national sports associations. The performing arts groups have devised their own Codes. These Codes set out standard of conduct on such matters as acceptance of advantages and conflict of interests.

Subvention Principles

7. Subvention Principles set out the parameters for holiday camps and sea activity centres on such matters as entry requirements for managerial staff, use of income, need for submission of annual budget and audited accounts.

Engagement of Services

8. For project-based financial support, the notification letter or agreement conveying approval for funding prescribes obligations for preparing evaluation reports and certified accounting records.

Quality Audit

9. LCSD conducts random audit on annual audit reports, funding records and compliance with the Code and terms of the Agreement or notification letter.

Our Observations and Opinions

HKAAA Case

10. LCSD initiated its own inquiry on the HKAAA case and implemented a series of improvement measures:

(a) requiring HKAAA to review its procurement procedures and engage independent third parties such as auditors in its procurement committee;

(b) holding a joint seminar with the Independent Commission Against Corruption ("ICAC") for all national sports associations on declaration of interests, promulgation of procurement guidelines and proper payment methods;

(c) issuing a sample Code (revised by ICAC) and procurement guidelines (devised by ICAC) to all national sports associations;

(d) requiring all national sports associations to review their internal ethical code and to draw up procurement procedures for submission to LCSD; and

(e) engaging professional bodies for thematic seminars to promote good practices to subvented organisations for better corporate governance.

11. For HKAAA, the term of the Chairman concerned expired and he ceased to hold office in January 2007. The service contract in question expired in September 2007.

Code of Conduct and Procurement Guidelines

12. The contents and provisions of the Codes devised by the performing arts groups vary from each other. Holiday camps, sea activity centres and grantees of the greening schemes are not governed by a Code. It is crucial that uniform standards, controls and safeguards be applied across all subvented activities, whether leisure or cultural in nature.

Quality Audit

13. The subvention agreement gives LCSD, as the subvention authority and custodian of public funds, the right to ask the subvented organisations to account for any suspected breach of the Code. To ensure effectiveness, LCSD should consider setting out this right in the agreement.

14. LCSD should refine its compliance checking system by specifying the types of records subvented organisations should keep for declaration of interests.

Sanctions

15. Provision for sanction, including termination of agreement, is included in Agreements. However, such sanction does not apply to holiday camps and sea activity centres for breach of Subvention Principles or the guidelines on invitation of quotations, calling of tenders and accounting arrangements.

Recommendations

16. The Ombudsman made a number of recommendations for LCSD and the Home Affairs Bureau (for the performing arts groups only):

(a) In consultation with ICAC, to devise a scheme to manage conflict of interests properly for award of contracts and to deal with circumstances where conflict of interests has arisen.

(b) In consultation with ICAC, to formulate or review the Code and procurement procedures, as necessary.

(c) To request the subvented organisations to circulate the revised Code and Procurement Guidelines among their officials and staff periodically.

(d) To consider enshrining in the Agreement the right to request the subvented organisations to account for any suspected breach of the Code.

(e) To specify the type of records the subvented organisations should keep for declarations of interests.

(f) To consider introducing a sanction clause for holiday camps and sea activity centres.

(g) To lay down procedures for remedial action if compliance checking reveals possible breach of the Code or the Agreement.

17. LCSD and the Home Affairs Bureau accepted all our recommendations.

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB/DI/165
Alleged Overcharging of Water Bills
(Investigation commenced on 22 March 2007 and completed on 10 March 2008)

Background

Complaints against the Water Supplies Department ("WSD") about overcharging have continued to surface over the years. Some water bills involved huge sums and WSD was criticised for not handling complaints satisfactorily.

Causes for Overcharging

2. From 1 April 2005 to 31 October 2007, WSD rectified 32,945 inflated bills. These cases had resulted from the following causes as identified by WSD:

Cause	No. of Cases	Percentage
Incorrect meter reading	2,554	7.75%
Defective meter	3,037	9.22%
Inaccurate estimation	18,218	55.30%
Wrong meter arrangement	460	1.40%
Leakage of inside service	92	0.28%
Cannot be ascertained by WSD	8,584	26.05%
Total	**32,945**	**100%**

Observations and Opinions

3. **General.** Overcharging cases dent WSD's reputation and professional credibility. They incur remedial costs in terms of extra man-hours for processing complaints and rectifying errors. These costs may not be visible, but are nonetheless real and not to be underestimated.

4. WSD's classification of the causes for overcharging is incomplete. Manpower constraint and human error may also contribute to overcharging.

5. **Consumption Determination.** Defective meters accounted for 9.22% of the confirmed cases of overcharging. WSD has been implementing a programme to replace about 1.2 million water meters over 12 years old by March 2011. Some 400,000 meters have been replaced so far.

6. WSD takes over eight million meter readings a year. Despite a reading accuracy of 99.97%, incorrect meter reading still caused 7.75% of confirmed overcharging. In some cases, the margin, or magnitude, of error could be outrageous.

7. **Charging by Estimation.** "Inaccurate charge estimation" was the predominant cause for overcharging, accounting for 55.3% of the confirmed cases. The magnitude of the excessive sums was, in some cases, staggering (exceeding the adjusted charge by over $146,000 or 3,697 times in one case). WSD should use estimation only on need and with caution and common sense. Where it can be replaced with proactive customer service, this should take precedence.

8. **Fault Checking.** Technology aside, vigilant monitoring and proactive staff back-up are equally essential for effective problem detection and prevention. Both seem to have been deficient at WSD.

9. **Manpower Constraint.** Continuing manpower constraint has rendered the checking mechanism ineffective. This raises questions about WSD's manpower planning and staff training.

10. **Handling Enquiries and Complaints.** There is a need for WSD to review regularly and upgrade, where warranted, its capacity for prompt response to public enquiries and complaints.

Recommendations

11. The Ombudsman made 13 recommendations to WSD, including:

   (a) To review the estimation mechanism and minimise its use by conducting actual meter reading, adopting users' self-readings and providing proactive customer services where practicable.

   (b) To improve classification of cases of overcharging and analysis of their causes and costs.

   (c) To promote staff vigilance to overcharging and ensure effective monitoring of meter reading accuracy.

   (d) To ensure adequate manpower for prompt follow-up on cases detected in fault checking.

   (e) To regularly review and upgrade, where warranted, the capacity for providing prompt response to public enquiries and complaints.

12. WSD generally accepted our recommendations, with implementation estimated to take one year.